

Information Industry Association
August 15, 1996

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of the)
Non-Accounting Safeguards of)
Sections 271 and 272 of the)
Communications Act of 1934, as)
amended; and Regulatory Treatment)
of LEC Provision of Interexchange)
Services Originating in the LEC's)
Local Exchange Area)

CC Docket No. 96-149

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COMMENTS OF THE INFORMATION
INDUSTRY ASSOCIATION

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August 15, 1996



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**Comments of the
Information Industry Association**

Summary

The Information Industry Association (IIA) hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking¹ in this proceeding. The Commission has initiated this rulemaking pursuant to the congressional directive set out in the new Section 272 of the Communications Act of 1934, as added by the Telecommunications Act of 1996 (1996 Act).² As is set out in greater detail below, IIA urges the Commission to implement the separation safeguards of Section 272 in a manner calculated to promote the competitive provision of interLATA information services. IIA

¹ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, Notice of Proposed Rulemaking (July 1, 1996) [hereinafter NPRM No. 96-149].

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§151 et seq.) [hereinafter 1996 Act].

believes that the structural separation requirements of Section 272 must be effectively applied to Bell Operating Companies (BOCs) who wish to provide interLATA information services, in order to guard against the potential for abuse of their existing monopoly power in the local exchange market.

IIA is the leading trade association of more than 550 companies engaged in the generation, distribution, transmission and use of information products and services. IIA's members have been at the forefront of providing new information and telecommunications-related services to the public. Therefore, any proceeding which affects the composition of the information services market will have a direct impact on our members services and competitiveness. We appreciate the opportunity to comment on this current proceeding.

Discussion

I. Due to the traditional monopoly advantage enjoyed by the BOCs in their respective regions, the FCC must vigorously enforce the structural requirements and separate affiliate safeguards of Section 272 until true competition exists in those regions, in order to insure the development and general availability of interLata information services. (NPRM No. 96-149, paragraphs 3, 5, 8, 12, 13, 14, 41, 57).

Section 272 of the 1996 Act prohibits a BOC from providing interLata information services, unless it provides that service through one or more affiliates.³ As the FCC noted in this current NPRM, a BOC may have the "potential incentive and ability to favor its affiliate and improperly allocate costs."⁴ Because of the BOCs traditional monopoly power in their respective regions and their ability to engage in practices such as discrimination against competitors that must use their facilities, the safeguards must be

³ 1996 Act, Sec. 272(a)(2)(C).

⁴ NPRM No. 96-149, para. 56.

implemented and remain in place during the transition from a monopoly local exchange to a more competitive environment.

The Commission must take care, however, to recognize that no structural safeguard can entirely shield information service providers from the dominant position of the BOCs. Indeed, even if these safeguards are properly implemented and adhered to by the BOCs, it is realistic to anticipate a “gray period” during the transition from monopoly power to true competition during which the BOCs could provide their affiliates with an unfair advantage in the provision of information services. IIA believes that the FCC has properly focused on the need to effectuate the “operate independently” requirement in section 272(b)(1) of the 1996 Act in order to ensure that businesses and their affiliates do not collude or conspire to circumvent the law’s structural separation restrictions.⁵ By enforcing strictly all of these requirements, the FCC will ensure that unaffiliated information service providers are not unfairly disadvantaged and that any residue of the BOCs monopoly will not interfere with the ability of information providers to develop and market new products and services. By promoting competition in the information services industry in this manner, the Commission will strengthen the role of the market as the arbiter of which services the public wants and needs, and will effectively promote the development of advanced information services. As the 1996 Act recognizes, competition benefits consumers by compelling providers to price their products at an affordable level.

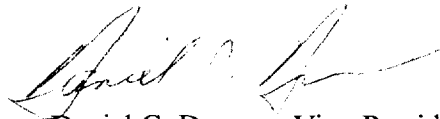
⁵ NPRM No. 96-149, para. 57.

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Conclusion

IIA appreciates the Commission's willingness to solicit industry comments on the full range of issues raised by the separate affiliate provisions of the 1996 Act. In order to facilitate the entry of new providers of interLATA information services, the FCC must scrupulously enforce the separate affiliate requirements of section 272 as prescribed by the Act, until such time as true competition exists in the local markets.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Daniel C. Duncan", with a stylized flourish extending to the right.

Daniel C. Duncan, Vice-President
Government Relations
Information Industry Association

Dated: August 15, 1996